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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA, ex
8 rel., RANDOLPH PETERSON,
9 individually and as relator; TRI-CITY
RAILROAD COMPANY, LLC, a
Washington limited liability company,

10 Plaintiffs,

11 v.

12 PORT OF BENTON COUNTY, et al.,

13 Defendants.

NO. 2:17-CV-0191-TOR

ORDER APPROVING *QUI TAM*
ATTORNEY FEES

14 BEFORE THE COURT is the Port of Benton's accounting for attorney fees
15 in relation to the *Qui Tam* claims. ECF Nos. 148, 213. Plaintiffs do not object to
16 the amount requested, but rather request the Court not require payment until final
17 judgment is entered on the remaining claims. ECF No. 218. The Court – having
18 reviewed the record and briefing – is fully informed. For the reasons discussed
19 below, the Court approves the requested attorney fees award and denies Plaintiffs'
20 request to defer payment.

1 **BACKGROUND**

2 By way of background, Plaintiffs Randolph Peterson and Tri-City Railroad
3 Company, LLC, brought this action asserting only a *Qui Tam* action based on two
4 legal theories. ECF No. 1. Plaintiffs thereafter filed the First Amended Complaint
5 asserting a plethora of other, unrelated causes of action and filed the Second
6 Amended Complaint adding more substance to their claims. ECF Nos. 6; 13.
7 After obtaining approval from the Court, Plaintiffs filed a Third Amended
8 Complaint. ECF No. 124. The Port objected, arguing the Third Amended
9 Complaint went beyond what was authorized by the Court; the Court agreed and
10 struck the complaint. ECF Nos. 133; 165. Plaintiffs thereafter filed the Fourth
11 Amended Complaint. ECF No. 167.

12 On August 8, 2019, the Port moved for summary judgment on the *Qui Tam*
13 claims and requested attorney fees. ECF No. 148. The Court granted the motion
14 as to the *Qui Tam* claims and the request for attorney fees under 41 U.S.C. § 3730.
15 ECF No. 196. The Port has since provided an accounting of the fees related to
16 defending the *Qui Tam* claims. ECF No. 213

17 **GOVERNING LAW**

18 31 U.S.C. § 3730(d)(4) provides: “If the Government does not proceed with
19 the action and the person bringing the action conducts the action, the court may
20 award to the defendant its reasonable attorneys’ fees and expenses if the defendant

1 prevails in the action and the court finds that the claim of the person bringing the
2 action was clearly frivolous, clearly vexatious, or brought primarily for purposes of
3 harassment.”

4 “The most useful starting point for determining the amount of a reasonable
5 fee is the number of hours reasonably expended on the litigation multiplied by a
6 reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). “This
7 calculation provides an objective basis on which to make an initial estimate of the
8 value of a lawyer’s services.” *Id.* “The district court [] should exclude from this
9 initial fee calculation hours that were not ‘reasonably expended.’” *Id.* at 434
10 (citation omitted).

11 “The product of reasonable hours times a reasonable rate does not end the
12 inquiry. There remain other considerations that may lead the district court to
13 adjust the fee upward or downward, including the important factor of the ‘results
14 obtained.’” *Id.* “Although hours claimed or spent on a case should not be the sole
15 basis for determining a fee, [citation omitted], they are a necessary ingredient to be
16 considered. The trial judge should weigh the hours claimed against his own
17 knowledge, experience, and expertise of the time required to complete similar
18 activities.” *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717 (5th Cir.
19 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989);
20 *Hensley*, 461 U.S. at 434, n.9 (“The district court also may consider other factors

1 identified in *Johnson v. Georgia Highway Express, Inc.*”). Other factors include
2 the novelty and difficulty of the questions, the skill requisite to perform the legal
3 service properly, the customary fee, the amount involved, and the results obtained.
4 *Johnson*, 488 F.2d at 717-719.

5 The party seeking an award of fees should submit evidence supporting the
6 hours worked and rates claimed.” *Hensley*, 461 U.S. at 433. The fee applicant
7 “should make a good faith effort to exclude from a fee request hours that are
8 excessive, redundant, or otherwise unnecessary” *Id.* “The applicant should
9 exercise ‘billing judgment’ with respect to hours worked [] and should maintain
10 billing time records in a manner that will enable a reviewing court to identify
11 distinct claims.” *Id.* at 437.

12 It is not necessary to know the exact number of minutes spent nor the precise
13 activity to which each hour was devoted nor the specific attainments of each
14 attorney. But without some fairly definite information as to the hours
15 devoted to various general activities, e. g., pretrial discovery, settlement
negotiations, and the hours spent by various classes of attorneys, e. g., senior
partners, junior partners, associates, the court cannot know the nature of the
services for which compensation is sought.

16 *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980) (quoting *Lindy Bros.*
17 *Builders of Phila. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167
18 (3d Cir. 1973)). “Where the documentation of hours is inadequate, the district
19 court may reduce the award accordingly.” *Hensley*, 461 U.S. at 433.

20 “[T]he district court has discretion in determining the amount of a fee

award.” *Id.* at 437. “It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award.” *Id.*

FEE REQUEST

The Port has submitted a declaration with supporting material in which the Port requests attorney fees in the amount of **\$102,980.25**. The Court previously approved of the hourly rate requested for the attorney fees in its Order Granting Rule 37 Attorney Fees in Part and the Court adopts that portion of the Order. ECF No. 215. The question is whether the requested amount is otherwise reasonable.

Counsel for the Port separated the requested fees into three categories to account for time billed for defending the *Qui Tam* claim. First, there is time billed for work pertaining only to the *qui tam* action—amounting to a request of **\$63,398.50**. ECF No. 213 at 3-4, ¶ 6. Second, there is time billed for work where the narrative did not cleanly separate time spent defending the *qui tam* action as opposed to addressing the other claims—amounting to a request of **\$12,943.50**. ECF No. 213 at 4-5, ¶¶ 8, 10. For this category, Mr. Crichton subtracted the estimated time spent on the other task(s). ECF No. 213 at 4, ¶ 8. Crichton asserts that he “was conservative with these entries and subtracted more time than what [he] and [his] colleagues believe was likely spent on the other task(s).” Mr. Crichton represents entries were not included if they “could not accurately estimate the time spent on other case-related tasks” ECF No. 213 at 4, ¶ 8.

Third, there is time billed for work that “was simply not possible to segregate out . . . because of the nature of the legal work”, such as “reviewing, parsing, and analyzing” the Plaintiff’s complaint and four amended complaints, drafting answers, work regarding initial disclosures, “wading through and analyzing [P]laintiffs’ hundreds of thousands of pages of document production”, reviewing expert reports, drafting discovery requests and responses, and overall case planning and strategy. ECF No. 213 at 5-6, ¶ 11 (“for example, how can one segregate by claim the time spent reviewing a dump of documents that were not produced separately by issue?”). Mr. Crichton requests 25 percent of the total fees for this category, which he believes is a conservative estimate of the portion of work devoted to the *qui tam* claims—amounting to a request of **\$26,638.25**. ECF No. 213 at 5-6, ¶ 11.

Mr. Crichton notes that the average billing rate is “under \$255 per hour” and adds: “To put into context the fee request, at this point, the Port has incurred total attorneys’ fees exceeding **\$600,000** in defending the Port Defendants against the claims asserted by plaintiffs in connection with this lawsuit.” ECF No. 213 at 8, ¶ 18.

DISCUSSION

The Court finds the requested amount represents a reasonable calculation of attorney fees in light of the nature of the issues, the interests at stake, the work

1 performed, and the results obtained. Notably, Plaintiffs also do not object to the
2 amount requested. ECF No. 218.

3 **1. Nature of the issues; Interests at stake**

4 This is not a simple slip and fall case where limited money damages are at
5 stake. Addressing the issues underlying the *Qui Tam* action required technical
6 knowledge of railroad law, the federal False Claims Act and a review of actions,
7 contractual agreements, and court/agency decisions spanning two decades.
8 Further, the stakes were high in terms of both monetary damages and reputation,
9 among other potential repercussions (including potential criminal charges, *see* 18
10 U.S.C. § 287). Namely, Plaintiffs sought millions of dollars in damages and the
11 Port was otherwise in jeopardy of losing an untold amount in grants, tax burdens,
12 etc. based on the alleged fraudulent activity. *See* 31 U.S.C. § 3729(a)(1)(G)
13 (providing for a “civil penalty of not less than \$5,000 and not more than \$10,000 . .
14 . plus 3 times the amount of damages which the Government sustains” for
15 violations of the False Claims Act). Moreover, Plaintiffs accused the Port of
16 defrauding the federal government (and the State of Washington) and lying to
17 multiple entities—which are serious charges as a matter of reputation and legal
18 liability. As a result, this is a case where the Port needed, and was entitled to, a
19 Cadillac defense. *Cf. Berryman v. Metcalf*, 177 Wash. App. 644, 662 (“the
20 defendant is not required to pay for a Cadillac approach to a Chevrolet case”).

1 **2. Work performed; Results obtained**

2 Counsel for the Port expended an amount of time and effort commensurate
3 with the importance of the matter. Plaintiffs litigated the case aggressively from
4 the start and created a great deal of work for counsel for the Port—largely as a
5 result of Plaintiffs’ submitting voluminous materials with their pleadings, motions
6 (while often failing to include a pin cite), and disclosures. Relevant to the *Qui Tam*
7 claims, the Port’s work included: reviewing Plaintiffs’ Complaint and four
8 amended complaints (all of which contained numerous exhibits), ECF Nos. 1; 6;
9 13; 124; 167; successfully defending against Plaintiffs’ attempt to disqualify the
10 Port’s counsel, ECF No. 24; submitting answers and counterclaims (and amended
11 answers), ECF Nos. 30; 39; 42; 178; defending against Plaintiffs’ motion to strike
12 the Port’s affirmative defenses, ECF Nos. 40; 44; successfully moving to strike
13 Plaintiffs’ Third Amended Complaint, ECF Nos. 124; 133; sifting through
14 thousands of pages of unorganized disclosures, numerous declarations, and
15 hundreds of exhibits; propounding and responding to discovery requests;
16 conducting depositions; and bringing and defending a lengthy, well-written motion
17 for summary judgment on Plaintiffs’ *Qui Tam* claims, among other work required
18 for preparing and planning for litigation and motions indirectly related to the *Qui*
19 *Tam* claims. While not all this work pertained directly to the *Qui Tam* action,
20 counsel for the Port adequately, and quite generously in some instances, discounted

1 their time submitted to account for this.

2 The Court notes that counsel for the Port spent a significant amount of time
3 preparing for and defending their motion for summary judgment for the *Qui Tam*
4 claims. However, the time spent is justified. The motion was 51 pages long and
5 included four detailed declarations with numerous attachments and a detailed, 41-
6 page statement of facts. Although the motion was lengthy, it was concise and
7 raised numerous meritorious arguments, nearly all of which the Court explicitly
8 adopted. The reply memorandum was 13 pages and the attached statement of facts
9 was 41 pages (which directly addressed Plaintiffs' statement of facts and was not
10 simply duplicative of the statement included with the motion). ECF No. 180. As
11 noted above, the issues addressed were relatively complex and involved a niche
12 area of law. Further, the work resulted in high-quality briefing and oral argument
13 and led to complete success on the merits.

14 The hours requested in the first and second category otherwise represent a
15 reasonable amount of time billed in light of the above-mentioned considerations.
16 While counsel for the Port billed for time on work regarding issues that were not
17 ultimately raised – such as standing, statute of limitations, etc. – these were
18 reasonable inquiries in defending the action. There is also time billed for a motion
19 to dismiss that was not submitted, but the work necessarily contributed to the
20 motion for summary judgment.

1 The Court also finds the request for 25 percent of the time billed for the non-
2 segregable work is reasonable. As noted above, much of the work performed that
3 was not limited to work on the *Qui Tam* claims was necessary to address any of the
4 claims—such as conducting depositions and reviewing the voluminous,
5 unorganized, disclosures. Importantly, the financial and other interests at stake
6 make it reasonable to devote significant time to the case for work that generally
7 applied to all claims. The court further notes that a reduction to 25 percent for
8 many of the entries appears to be a generous discount considering some of the
9 narratives provided for the work. This adequately offsets any other requests that
10 potentially include excess time or where the time requested was otherwise
11 questionable.

12 **TIMING FOR PAYMENT**

13 Plaintiffs request the Court not require immediate payment of the attorney
14 fees, reasoning:

15 [T]he lease between TCRY and the Port of Benton contains a fee-shifting
16 provision (ECF No. 169-19, pg. 13, ¶ 17), and thus, the award of attorney
17 fees ultimately entered by the Court against Plaintiffs and in favor of the
18 Port of Benton should be subject to offset and imposed only upon final
judgment. Accordingly, Plaintiffs request the Court refrain from certifying
as final the Port's award of attorney fees pursuant to FRCP 54(b).

19 ECF No. 218 at 2-3. Defendants object to the request to delay, asserting:

20 The only authority Plaintiffs cite to is Fed. R. Civ. P. 54(b), but that rule
concerns the finality of judgments in cases involving multiple claims or

1 parties. It does not, as Plaintiffs appear to argue, prohibit this Court from
2 issuing an order awarding fees to the Port and directing payment of fees
prior to entry of a final judgment in this action.

3 Likewise, nothing in 31 U.S.C. § 3730(d)(4) requires the Court to defer a fee
4 award pending resolution of unrelated, independent contract claims or
counterclaims, nor does the statute contemplate an offset of an award against
5 potential future liabilities of the prevailing party. And Plaintiffs offer no
applicable authority in support of either proposition.

6 ECF No. 226 at 3.

7 The Court will not defer ordering payment of the award. The Port is entitled
8 to the attorney fees it expended and there is no reason for delay. No issues remain
9 concerning the *Qui Tam* claims. These claims are easily separable from all other
10 issues in the case.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 12 1. The Port of Benton's Motion and Accounting for Attorney Fees in
13 relation to the *Qui Tam* claims, ECF Nos. 148, 213, are **GRANTED**.
- 14 2. Plaintiffs are ordered to pay attorney fees to Defendant the Port of
15 Benton in the amount of **\$102,980.25**, plus statutory interest accruing
16 pursuant 28 U.S.C. § 1961 at the rate of 1.59% per annum.
- 17 3. Pursuant to Fed. R. Civ. P. 54(b), the Court directs the Clerk of Court to
18 enter final judgment as to the Court's "Order Granting Defendant the
19 Port Of Benton's Motion for Partial Summary Judgment Re: *Qui Tam*
20


1 Action” at ECF No. 196 and this “Order Approving *Qui Tam* Attorney
2 Fees” as the Court determines there is no just reason for delay.

3 4. The Clerk of Court shall terminate the United States of America as
4 Plaintiff in the docket of this case, as no *Qui Tam* claims remain.

5 The District Court Executive is directed to enter this Order, enter a Final
6 Judgment as to the *Qui Tam* claims and furnish copies to the parties. The file
7 remains **OPEN** for the other pending claims.

8 **DATED** December 6, 2019.




THOMAS O. RICE
Chief United States District Judge